

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

August 5, 1998

ORDER OPENING  
INVESTIGATION;  
DEFINING SCOPE OF  
PROCEEDINGS

MONHEGAN PLANTATION POWER DISTRICT  
Petition for Authority to Serve

Docket No. 98-536

WILLIARD J. BOYNTON  
Request for Investigation of  
Central Monhegan Power

Docket No. 98-583

WELCH, Chairman; NUGENT, Commissioner

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**I. SUMMARY**

In this Order we open an investigation into the operation of Central Monhegan Power pursuant 35-A M.R.S.A. § 1302. We also describe how we will consider Monhegan Plantation Power District's Petition for authority to serve.

**II. DESCRIPTION OF PETITION AND COMPLAINT**

On July 14, 1998, the Monhegan Plantation Power District (District) filed a petition to provide electric service in Monhegan Plantation, Maine, pursuant to 35-A M.R.S.A. §§ 2102, 2105, and 3915 (Petition). The Petition was accompanied by a complaint filed by 11 residents of Monhegan alleging that the construction, operation, and maintenance of the existing utility Central Monhegan Power (Central), is unsafe, inadequate, unreasonable and contrary to the requirements of 35-A M.R.S.A. § 301, and that service is inadequate or cannot be obtained (Complaint). The Complaint asks the Commission to investigate this matter pursuant to 35-A M.R.S.A. § 1302 and to make certain findings pursuant to 35-A M.R.S.A. § 1306. The complainants ask the Commission to:

1. authorize the District to provide generation service in Monhegan and order Central to stop providing generation service once the District completes its facilities to provide generation service;
2. require Central to provide safe, reasonable and adequate service and maintain facilities until construction of generation and distribution facilities by the District is complete;

3. authorize the District to construct distribution facilities and provide distribution service once the District completes its construction of distribution facilities and order Central to cease providing distribution services after the distribution facilities are complete;
4. establish just and reasonable rates for Central for distribution only service and generation only service; and
5. establish interconnection and billing arrangements between the two utilities.

The Petition (which is incorporated into the Complaint) makes certain allegations including Central's failure to file an annual report and rate schedules with the Commission, comply with a LURC settlement agreement requiring it to cease operating its generator on the island's aquifer, and maintain its fuel truck and physical plant.

### III. BACKGROUND

We thoroughly described the history of the Central Monhegan Power Company in our order finding Mr. Remick's electrical system to be a "public utility." *Public Utilities Commission, Request for Commission Investigation Into Central Monhegan Power, a Privately Owned Electrical Generating Plant, as Whether It Meets the Criteria to be Classified as a Public Utility*, Docket No. 96-481. Order at 1-3. (October 17, 1996).<sup>1</sup> In that Order we required Central to file rate schedules and to request waivers for any rules that appeared to be unnecessary or inapplicable, within six months of the date of the Order. The Commission Staff met with Mr. Remick and suggested he compile all documents to justify rates. Mr. Remick has failed to file any such information, rate schedules or waiver requests to date.

Our October 17, 1996 Order also described certain generator location permit violations being investigated by the Land Use

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<sup>1</sup>In response to the complaint, Mr. Remick asks us to reconsider our decision that Central is a utility. The time to ask for reconsideration or to appeal of that decision has expired. Mr. Remick has presented no information that would cause us to change our original decision that Central is a public utility.

Regulation Commission (LURC).<sup>2</sup> In November 1996, Mr. Remick signed a settlement agreement with LURC agreeing that violations had occurred and that he would take certain actions to remedy those violations. Mr. Remick failed to comply with all the requirements and entered into an amended agreement in December 1997. This Agreement extended to August 1, 1998 the date by which Mr. Remick was to remove the generator from the aquifer. According to the Petition, Central has no alternative site available and has not pursued other options to solve its problem. The Petition further alleges that the fuel truck is inoperable and the system does not conform to the National Electric Safety Code.

During this same period of time, the municipal officers of Monhegan established a municipal power district pursuant to authority granted in 35-A M.R.S.A. §§ 3902-3915, the Municipal Electric District Enabling Act. On July 1, 1997, the Commission approved the formation of the District. As explained in that Order, if the District intends to serve where another utility is currently serving, it will need to seek further approval pursuant to 35-A M.R.S.A. § 2102. The District now makes such a request in its Petition.

Since we authorized the formation of the District last July, we understand, through communications made to our Staff, that the District has attempted to buy or lease some of Mr. Remick's system, in order for the District to provide electricity to customers until the District can build a new system. Apparently such negotiations have been unsuccessful. One of the District's other priorities has been to find a new location for a generator to comply with LURC's requirements. On July 1, the District obtained permission from the land trust on the island to locate a generator on land away from the aquifer. The District has also received a Community Development Block Grant to begin planning for a new system. The District cannot issue bonds for funds to build a generator until the Commission authorizes it to serve. According to the Petition, the District would like to first build a new generator and distribute the electricity using the existing distribution system until it can build a new distribution system.

On Thursday, July 30, the Town's First Assessor contacted the Commission and stated that she believed an emergency situation existed as power was being supplied by the back-up generator and Mr. Remick had removed the other generator from the Island. Plantation officials have been unable to reach Mr. Remick to learn whether he has plans for back-up generation. They are concerned that if the back-up generator fails, health

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<sup>2</sup>Monhegan is an unorganized territory subject to LURC's governance over land use planning and enforcement of environmental laws.

and safety will be jeopardized because Monhegan's water system and wharf require electricity.

After discussions with the Maine Emergency Management Agency, the Town decided to lease a generator to serve as a back-up to the existing generator. The leased generator is on the Island but not operating.

#### **IV. CENTRAL'S RESPONSE TO THE COMPLAINT**

On July 21, 1998, the Commission's Administrative Director notified Central's owner Mr. Remick about the complaint and allowed ten days to respond. Mr. Remick filed his response on July 30, 1998. He asks the Commission not to consider the complaint and to reconsider our order declaring Central a public utility. In addressing the specifics of the complaint and petition, he claims that Monhegan had offered to help him find an alternate location for the generator but it has not done so. He acknowledges that the fuel truck needs to be replaced. He has removed the main generator and Central is operating with a leased standby generator. According to Mr. Remick, his distribution system is not in compliance with the National Electric Safety Code because his distribution lines cannot be buried due to ledge and residents not permitting overhead lines. He also claims the District has proposed to purchase a standby generator and new fuel truck but has not done so. Central agrees that "authorizing the District to assist or buyout Central may help."

#### **V. DISCUSSION**

##### **A. Complaint**

The preliminary evidence before us indicates that we should not dismiss the complaint as without merit. It appears that Central may not be furnishing safe, reasonable, or adequate facilities and services in compliance with 35-A M.R.S.A. § 301. We are unable to determine if service is being rendered at just and reasonable rates, as Central has never complied with our order to file rates or seek necessary waivers.

We recognize that this is a small system serving an island community. We had hoped that the town officials and Mr. Remick could come to a mutually beneficial arrangement for both parties. This has not happened. Therefore, we will begin our investigation into the reasonableness of the rates and services being provided by Central pursuant to 35-A M.R.S.A. § 1302. Under this section, the Commission may allow for all parties to attempt to resolve the complaint to their mutual satisfaction. The Commission encourages all interested persons to continue discussions to possibly resolve this matter. As described below,

a prehearing conference will be held in August 18, 1998 at which time the Hearing Examiner will rule on petitions to intervene and allow parties to conduct discovery. Following that conference parties should report back to the Commission by September 1, 1998 on any progress in settling matters raised in either the complaint or petition.

We further order Mr. Remick to produce by August 17, 1998, a balance sheet and income statement for the last three years, pursuant to our authority under 35-A M.R.S.A. §§ 112, 501-506.

We remind Mr. Remick that by law, he must provide safe reasonable and adequate service. No utility, including Central, may abandon service without specific Commission approval pursuant to 35-A M.R.S.A. § 1104.

B. Petition

We will also consider the District's petition for authorization to serve. Although the petition and complaint were filed as one case, we will separate them for processing purposes. The complaint has a 9-month deadline and different procedural requirements under 35-A M.R.S.A. § 1302. Therefore we will assign the complaint case a separate docket number, Docket No. 98-583.

The District's Petition will be processed as a request for consent to serve as a public utility where another utility is already furnishing service. Such consent is required under 35-A M.R.S.A. §§ 2102, 3195. The Commission must determine, after a public hearing of all interested persons, that public convenience and necessity require a second utility. 35-A M.R.S.A. § 2105. The Commission has previously granted such requests upon a showing that: 1) public need exists for the second utility; 2) the petitioner has the technical ability to provide the service and 3) the petitioner has adequate financial resources. See e.g., *Standish Telephone Co. v. Public Utilities Commission*, 499 A.2d 458 (Me. 1985). The Commission may also grant conditional authority, requiring the utility to later submit more definite financial and construction plans for approval when they become known. See *Mid Maine Gas Utilities, Inc. Request for Approval to Furnish Gas Service*, Docket No. 96-465 (March 7, 1997).

We view the circumstances described in the Petition to be of an emergency nature necessitating resolution as expeditiously as possible, while at the same time allowing all parties an opportunity to be heard. Therefore, we will process the petition on an expedited schedule as described below.

**VI. PROCEDURES FOR PROCESSING THESE CASES**

Any person wishing to intervene in either docket should file a petition to intervene by August 12, 1998. Petitions to intervene must state the name of the person intervening, the docket number of the proceeding and the manner in which the person is affected by the proceeding. The petition must also include a short and plain statement of the nature and extent of the participation being sought, and a statement of the nature of any proposed evidence or argument. Any objection to petitions to intervene will be heard at the prehearing conference. Petitions should be filed with the Commission's Administrative Direction, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

A prehearing conference/technical conference in both dockets will be held in the Commission's hearing room on August 18, 1998. During the prehearing conference the Examiner will act on any petitions to intervene and discuss procedures for processing these cases. Following the prehearing conference, a technical conference will be held so that parties may conduct oral discovery in both dockets. The District and Central should send representatives to answer questions.

A hearing on the District's petition for authority to serve as a second utility will be held on September 9, at 11:00 a.m. in the Commission's Hearing Room. In lieu of prefiled testimony, the District shall provide additional written information in support of its petition by August 14, 1998. The information should include the name(s) of the witnesses who will answer questions about the filing at the September 9 hearing. Other parties to the Petition case may file written information in support of their positions by August 25, 1998.

A hearing on the Complaint will not be scheduled until after the parties report back on the status of discussions on September 1, 1998. Therefore the schedule for processing these cases are as follows:

Preliminary Schedule

Docket No. 98-536 - Petition for Authority to Serve

8/12	Petitions to Intervene Due
8/14	District files Additional Information in Support of Petition
8/18	Prehearing Conference/Technical Conference

8/25 Other Parties File Information

9/9 Hearing on Petition

Preliminary Schedule  
Docket No. 98-583 - Complaint

8/12 Petitions to Intervene Due

8/18 Prehearing Conference/Technical  
Conference

9/1 Parties Report on Progress in Settling  
Issues

Dated at Augusta, Maine, this 5th day of August, 1998.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent

**THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION**

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.